

Syllabus

IN THE MATTER OF
PETERSIME INCUBATOR COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3883. Complaint, Aug. 31, 1939—Decision, Oct. 28, 1939*

Where a corporation engaged in the manufacture of its "Petersime Electro-Thermo Bath" for applying dry heat to the body, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements which it disseminated through the mails, through newspapers and periodicals of general circulation, through circulars and other printed matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of said device—

- (a) Represented, directly or by implication, that use thereof provided a way to better health and constituted a cure or remedy for overweight or underweight, and for low metabolism, and would cleanse the system and keep it fit, insuring protection against disease and cleansing system of poisons, toxins, and wastes; and
- (b) Represented, as aforesaid, that said device was a cure or remedy for and had substantial therapeutic value in the treatment of many diseases and ailments and, more particularly, rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, neuritis, and lumbago;

Facts being it was, as aforesaid, device for applying dry heat to body, would not effect permanent change in weight in either direction (unless limited to temporary loss of weight), would not have any direct influence on basal metabolism or promote better health, or eliminate, cleanse, etc., poisons, toxins, and wastes that could not be taken care of by normal processes of elimination, and was not a cure or remedy for rheumatism and numerous other ailments and conditions above claimed, and regular use thereof might be harmful, especially to people who were debilitated and with deficient circulation;

With tendency and capacity to mislead and deceive prospective purchasers of said device into erroneous and mistaken belief that said representations were true, and to induce them to purchase said device because of such belief; and

- (c) Failed to reveal in its advertisements that regular use of its said electrothermo bath might be harmful and especially to debilitated individuals and those with deficient circulation;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Lynn C. Paulson for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Petersime Incubator Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Petersime Incubator Co., is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of business in the city of Gettysburg, in said State. The respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing, selling, and distributing, among other things, a device for applying dry heat to the body, known as "Petersime Electro-Thermo Bath."

Respondent sells said device to dealers and direct to members of the purchasing public, and causes said device, when sold, to be shipped from its place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false

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statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

The easy way to better health.

Are you overweight? Do you have rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, catch colds easily?

Would you like to: relax easily, soothe frayed nerves, enjoy restful sleep, keep physically fit?

Are you overweight, rheumatic, neurotic, or underweight? Do you have arthritis, sciatica, neuritis, lumbago, colds, or low metabolism? Are you nervous, fatigued, or troubled with insomnia?

These symptoms may often be attributed to poor elimination—lack of excretion through the pores of the skin. If you would like to enjoy the invigorating, cleansing benefits of a cabinet sweat bath at a small cost of only 3¢ to 4¢ per home treatment, then send for our home treatment today.

Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented, and does now represent, directly and by implication, that the use of such device is a cure or remedy for, and has substantial therapeutic value in the treatment of, many diseases and ailments of the human body, to wit: Rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, neuritis, underweight, lumbago, low metabolism, and many others not specifically set forth herein; that the use of such device will competently and effectively work wonders in restoring its users to sound health; will cleanse the human system and keep it fit, and insure protection against disease.

PAR. 3. In truth and in fact, said device advertised, sold, and distributed by respondent as hereinbefore stated, is a device for applying dry heat to the body, and is not a cure or remedy for any disease or a competent treatment therefor.

The said device is not a cure or remedy for rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, neuritis, underweight, lumbago, low metabolism, or a competent treatment therefor.

The use of said Petersime Electro-Thermo Bath Cabinet will not effect a permanent change in body weight in either direction unless limited to a temporary loss of weight. Said device will not have any direct influence on basal metabolism or promote better health, and will not eliminate, cleanse, rid, purge, carry away or dispose of poisons,

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toxins, or wastes that cannot be taken care of by the normal process of elimination.

Furthermore, the regular use of the said Petersime Electro-Thermo Bath Cabinet may be harmful, especially to debilitated individuals, and persons with deficient circulation.

PAR. 4. The use by respondent of the foregoing false, deceptive, and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to said device, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's device will accomplish the results indicated, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's devices.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 31, 1939, issued and served its complaint in this proceeding upon respondent, Petersime Incubator Co., a corporation charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 2, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all other intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, and the answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Petersime Incubator Co., is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of business in the city of Gettysburg, in said State. Respondent is now, and for more than 1

year last past has been, engaged in the business of manufacturing, selling, and distributing, among other things, a device for applying dry heat to the body, known as "Petersime Electro-Thermo Bath."

Respondent sells said device to dealers and direct to members of the purchasing public, and causes said device when sold to be shipped from its place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by means of the United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

The easy way to better health.

Are you overweight? Do you have rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, catch colds easily?

Would you like to: relax easily, soothe frayed nerves, enjoy restful sleep, keep physically fit?

Are you overweight, rheumatic, neurotic, or underweight? Do you have arthritis, sciatica, neuritis, lumbago, colds, or low metabolism? Are you nervous, fatigued, or troubled with insomnia?

These symptoms may often be attributed to poor elimination—lack of excretion through the pores of the skin. If you would like to enjoy the invigorating, cleansing benefits of a cabinet sweat bath at a small cost of only 3¢ to 4¢ per home treatment, then send for our home treatment today.

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Through the use of the statements hereinabove set out and others similar thereto not mentioned herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented, and now represents, directly or by implication, that said device is a cure or remedy for, and has substantial therapeutic value in the treatment of, many of the diseases and ailments of the human body, and more particularly rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, underweight, neuritis, lumbago, and low metabolism; that the use of said device will work wonders in restoring its users to sound health, will cleanse the human system and keep it fit, insure protection against disease, and will eliminate, cleanse, rid, purge, carry away or dispose of poisons, toxins, or wastes that can not be taken care of by the normal processes of elimination.

PAR. 3. The Commission finds that the said device "Petersime Electro-Thermo Bath" is a device for applying dry heat to the body, and is not a cure or a remedy nor a competent treatment for any disease; that said device is not a cure or remedy for rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, neuritis, underweight, lumbago, low metabolism; that the use of said "Petersime Electro-Thermo Bath" will not effect a permanent change in body weight in either direction, unless limited to a temporary loss of weight; that said device will not have any direct influence on basal metabolism or promote better health, and will not eliminate, cleanse, rid, purge, carry away, or dispose of poisons, toxins, or wastes that cannot be taken care of by the normal processes of elimination; that the regular use of the said "Petersime Electro-Thermo Bath" cabinet may be harmful, especially to debilitated individuals and persons with deficient circulation.

PAR. 4. Each and all of the representations as to the efficacy of respondent's "Petersime Electro-Thermo Bath" cabinet, contained in respondent's advertising as set forth herein, had and have a tendency and capacity to mislead and deceive purchasers and prospective purchasers of said device into the erroneous and mistaken belief that said representations are true, and to induce them to purchase respondent's said device because of such erroneous and mistaken belief.

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CONCLUSION

The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, Petersime Incubator Co., a corporation, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearings on the charges set forth in said complaint, and that, without further evidence or other intervening procedure the case might proceed to final hearing on the record, and the Commission having made its findings as to the facts and conclusion that said respondent, Petersime Incubator Co., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Petersime Incubator Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisements by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of a device now designated by the name of Petersime Electro-Thermo Bath, or any other similar device or devices, whether sold under the same name or any other name or names, which advertisements (1) represent, directly or through implication, (a) that the use of the said device Petersime Electro-Thermo Bath, provides a way to better health; (b) that the use of the said device is a cure or remedy for rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, overweight, underweight, neuritis, lumbago, low metabolism, or any other disease or ailment of the human body, or that its use is a competent treatment therefore; (c) that the use of said device will lessen or increase body weight unless such representation is limited to a statement that the use of said device may effect a temporary loss of weight;

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(d) that said device will have any direct influence on basal metabolism, or that it will eliminate, cleanse, rid, purge, carry away, or dispose of poisons, toxins, or wastes that cannot be taken care of by the normal processes of elimination; (2) or which advertisements fail to reveal that the regular use of the said device may be harmful, especially to debilitated individuals, and persons with deficient circulation.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

LOU STERLING AND WALTER FEHR GARDNER, TRADING
AS KIRK MEDICINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3770. Complaint, Apr. 20, 1939—Decision, Oct. 30, 1939*

Where two individuals engaged in sale of their variously designated "Kirk's Tablets," "Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound," to purchasers in various other States; in advertisements which they disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce, and through continuities broadcast from radio stations of extrastate audience, and through other means, and which were intended and likely to induce purchase of their said products—

- (a) Represented that there was an alkaline content in said tablets which aided nature in neutralizing and eliminating acid accumulations in digestive system, and that stomach distress, headaches, backaches, dizzy spells, indigestion, and excessive accumulation of gas were very often direct result of accumulation of toxic poison in digestive system, and that almost immediate relief from such ailments was secured through use of said tablets, facts being there was no alkalinizing substance in said tablets and such preparation was not cure or remedy for, or effective in treatment of, stomach distress, headaches, and other ailments and conditions mentioned and including excessive accumulation of gas in the stomach, and would not give relief therefrom;
- (b) Represented that headachy, listless, worn-out feeling, backaches, upset stomach, and lack of appetite, were caused by acid indigestion due, in great many cases, to an accumulation of bacteria in the digestive system, and that for such ailments and conditions almost immediate relief had been found by thousands of users of said tablets, as attested by thousands of letters received by said individuals from such users, facts being thousands of users had not attested to beneficial results secured from use of tablets as asserted by them, and their preparation would not relieve the digestive system of bacteria and would not give relief by neutralizing and eliminating bacterial action therein; and
- (c) Represented that their tablets would give relief by neutralizing and eliminating bacterial action, caused, in most cases, by absence of enough bile and pancreatic acidity, and that they were highly recommended for use in all cases of disorders of defective digestion, and in all cases of chronic undernourishment, facts being they would not correct disorders of defective digestion, nor give relief in all cases of chronic undernourishment;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and inducing said portion of